

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

REPLY COMMENTS OF WESTERN WIRELESS CORPORATION

INTRODUCTION

Western Wireless Corporation ("WWC") hereby submits its Reply Comments in response to the Commission's Second Report and Order and Third Notice of Proposed Rule Making, FCC 96-284 (released Aug. 15, 1996) in the captioned proceeding ("Second Order and Third NPRM"), advocating an automatic roaming obligation for commercial mobile radio service ("CMRS") licensees. Through its subsidiaries, WWC is a provider of both cellular service and personal communications service ("PCS").^{1/} Thus, WWC's reply comments reflect the perspective of both an incumbent cellular provider, which has several roaming agreements with other incumbent CMRS providers, and a new PCS entrant, which has found that many incumbent CMRS providers are unwilling to enter into roaming agreements with PCS licensees.

No. of Copies rec'd
List ABCDE

014

^{1/}Earlier this year, WWC became the first PCS carrier to commence commercial operation of an auction-awarded PCS system when it commenced service in the Honolulu MTA in February 1996, and has since begun operations in the Portland, Salt Lake City, El Paso/Albuquerque and Oklahoma City MTAs.

In WWC's comments filed on October 4, 1996 in the captioned proceeding, WWC provided ample evidence that cellular providers are resisting automatic roaming agreements with PCS carriers in many instances. Since the filing of its comments, WWC has continued to be stonewalled in its attempts to secure roaming agreements with certain incumbent cellular carriers, underscoring WWC's position that market forces alone will not ensure the widespread availability of roaming agreements and that minimal regulation is necessary to ensure that new PCS and covered SMR carriers can establish themselves as viable competitors against incumbent cellular providers. Furthermore, the recent and anticipated system launches by dominant PCS providers using the code division multiple access ("CDMA") technology, whose footprint will soon surpass the coverage of the GSM providers, necessitate immediate action by the Commission to ensure that PCS providers using other technologies can offer a competitive roaming package. Finally, the need for PCS-to-cellular roaming is no longer a theoretical issue because of the imminent availability of dual-mode phones (i.e., PCS-to-analog cellular) that can enable subscribers to benefit from nationwide, ubiquitous wireless service. Based upon these continued experiences and new developments, WWC reiterates that the Commission must impose an automatic roaming requirement on CMRS providers to promote the continuing viability of new PCS entrants, particularly smaller providers, and advance the public interest in nationwide, ubiquitous, and competitive telecommunications service.

ARGUMENTS

A. Many Incumbent Cellular Carriers Continue to Resist Automatic Roaming Agreements With PCS Providers

There is ample evidence that cellular carriers are resisting automatic roaming agreements with PCS carriers in many instances. Contrary to the claims asserted by many of the cellular incumbent provider commenters, the immediate revenues to be gained from roaming agreements appear in some cases to be outweighed by cellular incumbents' long-term anticompetitive incentives to preserve their first-to-market advantages.

As explained in WWC's initial comments, in at least two instances, WWC has been wholly frustrated in its attempts to negotiate roaming agreements with other cellular carriers that would allow its PCS customers to roam onto the carriers' systems with dual-mode digital PCS-to-analog cellular equipment. In one case, a regional cellular carrier has continued to refuse to permit WWC's PCS customers to roam onto its cellular facilities. The carrier has even retaliated that any efforts by WWC to provide its PCS customers with dual-mode phones that might be indistinguishable to the carrier from WWC's cellular phones would result in the carrier's refusal to permit WWC's cellular customers to roam in its cellular markets.^{2/} Such carrier's continued refusal to allow WWC's PCS subscribers to roam in its markets, even at the cost of losing the revenues from WWC's PCS and cellular subscribers, indicates that market incentives are entirely insufficient to promote the availability of roaming.

^{2/}It is worth noting that some of WWC's and Cook Inlet Western Wireless PV/SS PCS, L.P.'s ("Cook/Western's") PCS markets overlap with some of that carrier's cellular service areas. WWC holds a 49.9% limited partnership interest in Cook/Western, which holds 13 C Block BTA's and was the high bidder for a fourteenth in the recently concluded C Block reauction. Anticompetitive motivation is thus all the more likely.

In the second case, WWC has continued to be thwarted in its attempts to negotiate a PCS-to-cellular roaming agreement with a large wireline cellular carrier. This carrier refuses to discuss any arrangement by which WWC's PCS customers could roam into that carrier's cellular territory.^{3/} Of particular significance is the fact that this carrier has demonstrated this intransigence despite the fact that another entity within its same corporate family has PCS markets that are adjacent to and in the vicinity of WWC's cellular and PCS markets and has shown an interest in entering into PCS-to-PCS and PCS-to-cellular roaming agreements with WWC.

Finally, even though in another instance WWC was able to reach a PCS-to-cellular roaming agreement with another large wireline cellular and PCS carrier, such agreement required a full nine months of negotiation and was ultimately effected, it seems, only because of the other party's desire to secure an agreement allowing its PCS customers to roam onto WWC's cellular facilities.

It has been shown in each of the above instances that there were other circumstances tending to promote WWC's ability to reach PCS-to-cellular roaming agreements (i.e., the risk of the other carrier's losing cellular-to-cellular, not just PCS-to-cellular, roaming revenues or not being able to reach agreement to allow its PCS customers to roam onto WWC's cellular facilities), even though in two cases WWC still could not overcome the incumbents' anticompetitive incentives. It thus can only be surmised just how difficult it would be for a PCS carrier to reach an agreement with a cellular carrier in the absence of such negotiating strengths. WWC's concrete experience unambiguously demonstrates the need for Commission intervention in the form of a rule requiring automatic PCS-to-cellular roaming.

^{3/}There is overlap between this carrier's cellular footprint and WWC's and Cook/Western's PCS markets.

WWC's disagrees with the many large incumbent cellular carriers that claim market forces are sufficient to encourage roaming agreements between new PCS entrants and the cellular incumbents.^{4/} Since the filing of its comments on October 4, 1996, nothing in WWC's experience in pursuing roaming agreements with certain cellular carriers has indicated that the anticompetitive incentives behind these cellular carriers' behavior is likely to change soon. WWC continues to be at an impasse in its negotiations with the cellular carriers described in the preceding paragraphs. Because those carriers benefit from widespread roaming capability and because they want to preserve their first-to-market advantage, they have a strong incentive to deny the same capability to new entrants which they, as a group, view as a competitor. At this early stage in the development of PCS service, short run roaming revenue is worth forsaking by cellular carriers in order to preserve the most important distinguishing feature of their service that cellular providers can currently claim: widespread roaming capability.

Some commenters allege that because PCS MTAs are larger than cellular service areas, subscribers may not need or want the ability to roam.^{5/} While PCS MTAs are larger than cellular MSAs and RSAs, it is clear that many subscribers demand nationwide roaming capability, as evidenced by cellular providers' advertisements which so grandly exploit the lack of roaming capability of PCS providers.^{6/} WWC must meet that demand to become competitively viable. The

^{4/}Ameritech comments at 1; Airtouch Communications, Inc. comments at 2-3; and GTE Mobilnet comments at 1.

^{5/}Airtouch Communications, Inc. comments at 3; and Vanguard Cellular Systems, Inc. comments at 4.

^{6/}As WWC described in its comments, since the introduction of PCS competition in the Washington/Baltimore market, advertising by incumbent cellular companies has focused almost

evidence is clear that the necessary corrective action is the immediate requirement of nondiscriminatory automatic roaming. WWC continues to submit that expanding the manual roaming rule without similarly requiring nondiscriminatory "automatic" roaming will prevent convenient, user-friendly roaming from becoming widely available to PCS providers and will stifle competition in the wireless marketplace.

B. PCS Providers Will Bear the Burden of any Additional Costs Associated with a Nondiscriminatory Roaming Regulation

Many commenters complained that they may end up bearing some of the costs associated with nondiscriminatory roaming regulations.^{7/} Under transitional roaming requirements, cellular providers should not have to incur any further expense or provide any additional facilities. The CMRS provider seeking roaming capabilities for its subscribers must provide its customers with a dual-mode, dual-frequency handset to enable roaming and thus bear essentially all of the costs of roaming. Roaming PCS subscribers' calls will appear no different to cellular carriers^{8/} and will require no additional equipment investment or costs beyond those imposed by cellular roaming agreements.^{9/}

exclusively on lack of roaming capability by PCS operators. WWC comments at 6 n.8.

^{7/}360° Communications Company comments at 4; and Vanguard Cellular Systems, Inc. comments at 6.

^{8/}Letter from Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis Group - Washington, to William F. Caton, Acting Secretary, FCC, dated June 25, 1996.

^{9/}"PCS Roaming: Critical to the Success of CMRS Competition" attached to Letter from Eric W. DeSilva, counsel for the Personal Communications Industry Association, to William Caton, FCC, dated March 21, 1996.

Furthermore, some incumbent cellular carriers allege that the FCC should not implement automatic roaming because such regulations will result in higher roamer fraud liability.^{10/} They allege that they will not be able to protect themselves against roamer fraud if they cannot impose certain fraud controls upon their roamer agreement partners. However, cellular carriers have exercised various options to protect themselves in automatic roaming agreements reached under the existing manual roaming rule, and similar protective measures can be implemented to protect the carriers under an automatic PCS-to-cellular roaming rule. WWC advocates that carriers be permitted to include provisions in their agreements to suspend roaming service in case of fraud, or other appropriate anti-theft provisions, so long as they do so on a nondiscriminatory basis. Furthermore, the digital technology used in PCS will make it far more difficult for wrongdoers to infiltrate the system, thereby reducing the costs that are already being managed in cellular-to-cellular roaming. Therefore, roamer fraud is not a significant consideration and is greatly outweighed by the public interest considerations compelling the implementation of an automatic roaming requirement.

C. The Emergence of the Dominant CDMA Carriers Underscores the Immediate Need for an Automatic Roaming Requirement Among CMRS Providers

Since the filing of WWC's comments, several systems have commenced operations utilizing the CDMA technology, and other CDMA system launches are imminent.^{11/} It is expected

^{10/} Airtouch Communications, Inc. comments at 3; and Ameritech comments at 3.

^{11/} See PrimeCo Covers 32 Million People with Launch of PCS Service, Communications Daily, Nov. 13, 1996. PrimeCo Personal Communications will offer CDMA-based service in the following 16 cities: Norfolk, Richmond, Fort Lauderdale, Miami, Orlando, Tampa, Chicago, Milwaukee, New

that the number of CDMA networks will equal or exceed the number of GSM networks by year end.^{12/} In view of the selection of CDMA technology by Sprint PCS, PrimeCo Personal Communications, Nextwave Telecom Inc. and others, PCS providers utilizing the CDMA protocol will soon provide service to most of the geographical United States. Therefore, WWC and other carriers utilizing the GSM technology must not only compete with the national roaming capabilities of cellular carriers, but also face immediate competition from the larger CDMA carriers, whose expansive PCS footprint combined with the coverage of their own and their affiliates' cellular markets virtually guaranty them ubiquitous coverage. Consequently, a transitional roaming requirement ensuring PCS-to-cellular roaming is needed for the viability of all but the largest PCS carriers; otherwise market failures will occur.^{13/} Transitional rules will increase consumer welfare by preventing the loss of competition.^{14/}

D. PCS-to-Cellular Cross - Roaming Technology is no Longer a Theoretical Benefit

Since WWC filed its comments in this proceeding, dual-mode wireless phone technology has been more fully developed and is now on the verge of being available to the public. As stated

Orleans, Dallas, Fort Worth, Houston, San Antonio and Honolulu.

^{12/}"If Sprint sticks to [its] ambitious schedule [launching 15-20 markets by the end of the year], the number of operating CDMA networks will be as great or greater than the current number of GSM networks by year's end." Centennial, PrimeCo Roll Out First Commercial CDMA Offerings, PCS Week, Nov. 13, 1996.

^{13/}Affidavit of Professor Jerry A. Hausman, Attachment to Pacific Reply Comments, at 5-8; Statement of Jerry A. Hausman, filed as attachment to Letter from Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis Group - Washington to William F. Caton, Acting Secretary, FCC, dated March 19, 1996 at 2-5.

^{14/}Id.

in its comments, WWC has committed millions of dollars under a contract with Nokia to acquire dual-mode handsets. Nokia is committed to deliver the first dual-mode handsets to WWC by the beginning of 1997.^{15/} Failure of cellular carriers to enter into automatic roaming agreements with WWC and other carriers without other means to achieve ubiquitous coverage will in very short order impede their ability to provide seamless coverage to their PCS customers on equipment that is part of their inventory and, accordingly, to attract or retain customers. Now that the technology is in place, the Commission must create an automatic roaming regulation to tear down the anticompetitive incentives that remain the sole barrier to PCS providers offering a competitively viable CMRS service to the public.

CONCLUSION

For the foregoing reasons, WWC strongly urges the Commission to recognize the strong anticompetitive motives affecting many incumbents and take swift corrective action to prevent incumbent cellular carriers from denying reasonable automatic roaming arrangements to new entrants. WWC urges the Commission to adopt rules obligating cellular, broadband PCS and covered SMR providers to provide automatic roaming service. As WWC maintained in its

^{15/}See also Ericsson Sells \$300 Million in Handsets to AT&T Wireless Services for "Digital PCS," PCS Week, Nov. 13, 1996. This agreement between Ericsson and AT&T includes 800 and 1900 MHz Time Division Multiple Access ("TDMA") dual-mode handsets, and deliveries of the handsets are scheduled to begin in January 1997.

comments, these automatic roaming requirements should sunset five years after the Commission awards the last group of initial licenses for currently allocated broadband PCS spectrum.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

By: Doane Kiechel
Louis Gurman, Esquire
Doane F. Kiechel, Esquire
Kimberly D. Wheeler
Gurman, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W.
Suite 500
Washington, D.C. 20036
202-328-8200

Dated: November 22, 1996